IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.424 of 2007

The Commissioner of Income-tax-I,
Chennai. ..Appellant

Vs

M/s.Cholamandalam Securities Ltd.,
28, Rajaji Salai,
Chennai-600 001. ..Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "A" Bench, Chennai in I.T.A. No.1620/Mds/2002 dated 06.10.2006 for the assessment year 1997-98 agaisnt the order of the Commissioner of Income Tax, (A) III Chennai dated 24.6.2002 and made in ITA.No. TR. 348/2001-202/A III GI.No. PA.No. 36 C Assessment Year 1997-98 against the order of Deputy Commissioner of Income Tax Company Circle I(i) Chennai 34, dated 6.1.2000 PA/GI.No. 36.C, Assessment Year 1997-98.

For Appellant : Mr.J.Naresh Kumar,
Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, "A" Bench, Chennai in I.T.A. No.1620/Mds/2002 dated 06.10.2006 raising the following substantial question of law:-

> Whether in the facts and circumstances of the case, the Tribunal had properly exercised its discretion and was right in deleting the penalty imposed u/s 271(1)(c), when clearly the assessee had not included the total brokerage received by it in its profit and loss

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account?

2. The facts leading to the above substantial question of law are as under:

The assessee is a Company incorporated on 28.09.1994 as a 100% subsidiary of M/s.Cholamandalam Investments and Finance Co. Ltd. The company is a member of the Madras Stock Exchange and is doing business as a share broker. The relevant assessment year is 1997-98 and the corresponding accounting year ended on 31.03.1997. The assessee filed Return of income on 01.12.1997 admitting taxable income at Rs.3,31,710/-. The Return was processed under Section 143(1)(a) of the Income-tax Act ("Act" in short) and thereafter taken up for scrutiny and notice under Section 143(2) was served. The Assessing Officer completed the assessment under Section 143(3) of the Act on 30.11.1999 on a total income of Rs.27,44,016/- and made the following additions and disallowances to the Income-tax Return:-

i)	Disallowance u/s.43B	Rs. 34,247
ii)	Loss on purchase and sale of shares disallowed as speculation loss u/s.73	Rs.1,36,000
iii)	Brokerage payable to Cazenove & Co., UK disallowed u/s.40	Rs.19,97,845
iv)	Interest to Cazenove & Co U.K. disallowed u/s.40	Rs.1,79,269
v)	Short admission of interest	Rs. 29,307

Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) confirmed the additions and disallowances made as per Sl.Nos.i), iii), iv) and v) mentioned above and directed that the disallowance of the loss of Rs.1,36,000/- should be examined again after affording an opportunity to the assessee. The Assessing Officer also passed a Consequential Order after giving an opportunity to the assessee and the said assessment order has also been accepted by the assessee. During the course of assessment proceedings, the assessee was served with a show cause notice for concealment of brokerage of income. In response to the show cause notice, the assessee filed a letter dated 02.02.2000 and offered an explanation. The Assessing Officer, not satisfied with the explanation offered by the assessee regarding concealment of income earned by way of brokerage income, levied the penalty in dispute. The Assessing Officer levied a penalty of Rs.10 lakhs. Aggrieved by the order the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) allowed the appeal and held that the assessee had not filed any inaccurate particulars of income and has also not concealed any income from the Revenue. Aggrieved, the Revenue filed an appeal to the Income-tax Appellate Tribunal

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("Tribunal" in short). The Tribunal dismissed the appeal filed by the Revenue and upheld the order of the C.I.T.(A) cancelling the penalty. Hence the present appeal is filed by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that the assessee had not shown the sub-brokerage in the profit and loss account. The assessee had shown only the net-brokerage in the profit and loss account which is against the method of accounting adopted by the assessee. It is further submitted that the Assessing Officer called the details of current liability in Schedule VII of the Balance Sheet. Only after examination, it was found by the Assessing Officer that there was understatement of brokerage receipts and hence the levying of penalty by the Assessing Officer is in confirmity with law.

4. Heard the counsel. The assessee is a member of Stock Exchange and is a Share Broker. During the course of assessment proceedings, the Assessing Officer found that the assessee had admitted profit of Rs.68.32 lakhs as brokerage. However, on examination it was found that gross brokerage earning was Rs.88.32 lakhs. The assessee himself had deducted the sub brokerage payable to M/s.Cazenove and Co. amounting to Rs.19.98 lakhs and only the net brokerage of Rs.68.32 lakhs had been admitted in the profit and loss account. The sub brokerage of Rs.19.98 lakhs payable was shown as liability in the balance sheet in Schedule VII. The assessee had filed all the details before the Assessing Officer and also not concealed anything from the Department on the basis of the available record and details furnished by the assessee. It is seen from the record that the assessee has been following the accounting practice of netting the brokerage earned against sub brokerage payable and only the net amount was reflected in the profit and loss account. Since the sub brokerage has not been paid, it was shown as outstanding in the balance sheet. Hence there has been no concealment of income or there is no furnishing of inaccurate particulars of income. The only mistake committed by the assessee is not showing the sub brokerage as payable in the profit and loss account. Instead he has shown the net brokerage receivable and correspondingly the outstanding sub brokerage payable has been shown in the balance sheet. This is an acceptable system of accounting. The Assessing Officer has found out only from the details available from the accounts furnished. The Tribunal as well as the first appellate authority were of the view that this is not a case where inaccurate particulars of income have been furnished or there is concealment of income by the assessee. Rather, this is a case where a genuine and bona fide mistake of not showing sub brokerage explicitly in the profit and loss account, has been committed, because the assessee was following the netting of brokerage earned. For the purpose of levying penalty, there should be a direct attempt of concealment of items of income or a portion thereof from the knowledge of Income-tax Authority. The imposition of penalty is not automatic and in this case, the mistake committed by the assessee is accidental or inadvertant and not intentional. It is also seen that the assessment has been accepted and tax has been paid since the entries relating to the sub brokerage have been written back in the financial year 1999-2000.

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5. Both the authorities have given a concurrent finding that there is no concealment or inaccurate particulars furnished by the assessee and it is only a bona fide mistake and not intentional. The findings given by the Tribunal as well as the First Appellate Authority were based on valid materials and evidence. Recently, the Supreme Court in the case of Commissioner of Income-tax Vs. P.Mohanakala (291 ITR 278), held that whenever there is a concurrent factual finding by the authorities below, the same should be accepted and no interference should be called for by the High Court. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

6. In view of the foregoing reasons, no substantial question of law arises for consideration of this Court and accordingly the tax case is dismissed. No costs.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, "A" Bench,
   Chennai.

2. The Assistant Ragistrar, Income Tax Apellate Tribunal,
   IIIrd floor,Rajaji Bhavan, Besant Nagar, Madras 90.

3.The Secretary,
   Central Board of Direct Taxes,
   New Delhi.

4. The Commissioner of Income-tax (Appeals) III,
   Chennai.

5. The Deputy Commissioner of Income-tax,
   Company Circle I(1), Chennai-34.

+ One cc to M/s Pusya Sitaraman, SR.Sc SR 32690

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T.C.(A) No.424 of 2007
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